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STATUTES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. .....

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN L. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. ZELL and EDWARD DERHAM, on Behalf of Themselves and All Others Similarly Situated,

Petitioners,

vs.

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, LOEW'S INCORPORATED, PARAMOUNT PICTURES, INC., WARNER BROTHERS PICTURES, INC., COLUMBIA PICTURES CORPORATION, SAMUEL GOLDWYN PRODUCTIONS, INC., REPUBLIC PRODUCTIONS, INC., HAL E. ROACH STUDIO, INC., TECHNICOLOR MOTION PICTURE CORPORATION, TWENTIETH CENTURY FOX FILM CORPORATION, R. K. O. RADIO PICTURES, INC., UNIVERSAL PICTURES COMPANY, INC., and ASSOCIATION OF MOTION PICTURE PRODUCERS, INC.,

Respondents.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable the Supreme Court of the United States:

The petition of Oscar Schatte, Raymond E. Conaway, Andrew M. Anderson, Charles L. Davis, Harry Beal, Arthur Djerf, Ewald K. Albrecht, Harry L. Talley, Harry Davidson, John L. Kierstead, Thomas W. Hill, Lloyd C. Jackson, Alfred J. Withers, John H. Zell and Edward

Derham, on behalf of themselves and all others similarly situated, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered on January 16, 1948. [R. 144.]

Opinion Below.

The opinion in the District Court is reported in 70 Fed. Supp. 1008 [R. 122; App. A]. The *per curiam* opinion of said Circuit Court of Appeals is not yet reported, but is found in the record [R. 143], as follows:

> "For the reason stated in its opinion (70 F. Supp. 1008), the judgment of the District Court is affirmed."

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on January 16, 1948 [R. 144]. The jurisdiction of this Court is invoked under Section 240 of the Judicial Court, as amended (28 U. S. C., Sec. 347).

Summary Statement of Case.

The general nature of this case is stated in the opening paragraphs of the District Court's opinion [R. 122; App. A] as follows:

> "This action for a declaratory judgment is brought by sixteen individuals, members of the United Brotherhood of Carpenters and Joiners of America (hereinafter called Carpenters), on behalf of themselves and others similarly situated, to determine and to protect against alleged conspiracy their rights under certain agreements entered into between the motion picture studios, Carpenters, the International Alliance of Theatrical Stage Employees and Moving

Picture Operators of the United States and Canada (hereinafter called Stagehands), and others. The defendant studios and Stagehands (IATSE) have moved to dismiss on the grounds that: (1) this court lacks jurisdiction; (2) the court should, in the proper exercise of its discretion, decline to assume jurisdiction; and (3) the complaint fails to state a claim upon which relief can be granted.

"The forty-eight page complaint when analyzed presents nothing more or less than a request that this court interpret a private contract or agreement allocating certain work on stage sets in the moving picture industry. * * * The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship.

"Thus, we have an action in which private individuals ask this court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other. Since this is a court of limited jurisdiction, every case brought here must fall within the terms of a provision of some statute of the United States. Plaintiffs allege (paragraph VIII):

> 'Jurisdiction of this Court is vested by virtue of Section 400, Title 28, United States Code Annotated; Section 41(1), 41(8), 41(12), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United State Code Annotated; Sections 43 and 47(3), Title 8, United States Code Annotated; Section 157, Title 29, United States Code Annotated; and the Constitution of the United States, Amendments V and XIV.'

> "If the case does not fall within the terms of one or more of these statutes or amendments to the Constitution, the Court must dismiss the action for want of jurisdiction."

In concluding the opinion, the Court ordered that the case be "dismissed for want of jurisdiction." [R. 128.]

The Agreements.

The "certain agreements entered into between the motion picture studios, Carpenters, and International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada (hereinafter called Stagehands), and others," and the "private contract or agreement allocating certain work on stage sets in the moving picture industry," and the "contract negotiated on their behalf by a labor union," referred to in the above quotation from the District Court's opinion, included the following agreements and matters relating thereto:

(1) The employment of the Carpenters by the defendant Companies, to do the carpenters' work in connection with making of motion pictures, since the beginning of the industry in California, as alleged in paragraph XIII [R. 9].

(2) The agreement between the Carpenters' Union and the IATSE, negotiated in the Executive Council chamber of the A. F. of L. with Samuel Gompers presiding, on July 9, 1921, as alleged in paragraphs XV and XVI, and as shown in Exhibit "B" [R. 10-37-38; App. B]. This agreement defined the work of the Carpenters, as follows:

> "It is agreed by the International Alliance of Theatrical Stage Employees that all work done on lots or location and all work done in shops, either

bench or machine work, comes under the jurisdiction of the United Brotherhood of Carpenters and Joiners of America.

"It is agreed that:

"All carpenter work in and around Moving Picture Studios belongs to the carpenter. This includes:

"1. Any and all carpenter work in connection with the Moving Picture Studios, the construction of stages or platforms on which building or parts of buildings are to be erected.

"2. All carpenter work in connection with the erection of any building or part of building, from which a picture is to be taken.

"3. The operation of all wood-working machinery in the making of all furniture, fixtures, trim, etc., for use in Motion Picture Studios, belongs to the carpenter."

(3) An apparent agreement between the Carpenters and the IATSE, dated February 5, 1925, and the apparent ratification thereof by the General President of the Brotherhood of Carpenters, alleged in paragraphs XVII and XVIII [R. 11-12, 35-36]. These two paragraphs were alleged in error due to mistaken information. Leave will be asked to amend them, and any related allegations, so as to allege that this apparent agreement of February 5, 1925 was never approved by the General President, never became effective, and was never used or followed.

(4) The contract between the Motion Picture Companies and the Carpenters' Union, and various other crafts, beginning with the basic agreement of November 29, 1926, and continuing through periodic adjustments, supplements, amendments and extensions, to and including the present Exhibit "A" agreement of July 2, 1946, as alleged in paragraph XIV [R. 9, 28-34; App. C]:

This present agreement is:

1. A "contract for two years." [R. 32; App. C, 63];

2. A collectively bargained agreement in its provisions governing "wage scales, hours of employment and working conditions" [R. 33; App. C, 64]; and

3. An employment contract in its provisions for "all crafts going back to work on Wednesday a.m. July 3, 1946" [R. 34; App. C, 63], and the return to work of the Carpenters thereunder.

4. "An interim agreement," to serve, "pending the completion of contracts" [R. 28, 29; App. C, 59], that is, an agreement to negotiate under Section 7 of the National Labor Relations Act, as now amended [R. 28, 29].

The defendant IATSE was present when this agreement was made [R. 29; App. C, 59].

(5) The Cincinnati Agreement of October, 1945, between the defendants, the Companies, the IATSE, and the Carpenters Union, and other crafts, as embodied in the directive of the A. F. of L. Executive Council [R. 42-43; App. D], alleged in paragraph XIX [R. 12, 42], directing, in part, (1) directing that the Hollywood strike be terminated immediately, (2) that all employees return to work immediately, and (4) that a committee of three members of the Executive Council of the American Federation of Labor investigate and determine within thirty days all jurisdictional questions still involved.

(6) Compliance with said Cincinnati Agreement by the return of the Carpenters to their historic work, and the continued employment of the Carpenters in their said historic work, and the withdrawal of the IATSE therefrom, as alleged in paragraph XX [R. 13].

(7) The planned violation of said Cincinnati Agreement, by the IATSE, and its officers, particularly as to the Carpenters' work of "set construction," as alleged in paragraph XXIV [R. 16].

(8) The decision of the Three-Man Committee [App. D], dated December 26, 1945, alleged in paragraph XXIII [R. 14-16], to maintain the historic division of work between the Carpenters and the IATSE [R. 45; App. D, 69], as follows:

> "An analysis disclosed that three possible methods of solution could be utilized, *i. e.,*" * * *
>
> "(c) A division of work designations within the industry patterned after previous agreements, negotiated mutually by the various crafts.
>
> "After careful and thorough study the committee unanimously agreed that the latter plan is unquestionably the best method of approach. It is the committee's considered opinion that such procedure affords the only plausible solution to a most difficult and complex problem.
>
> "Accordingly, this decision is based on that premise * * *"

(9) The misinterpretation and violation of said December 26, 1945 award, by the defendant Companies (and by the IATSE), within the month thereafter, in wrongfully discharging Carpenters from carpenters' work, and replacing them with members and permittees of said IATSE as alleged in paragraph XXV [R. 17].

(10) The action of the Executive Council of the A. F. of L., because of said aggressions, instructing its Three Man Committee to clarify its said award of December 26, 1945, and the clarification issued by said Committee on August 16, 1946, to carry out the Committee's

original intention, as alleged in paragraph XXVII [R. 17], and shown by Exhibit "F" [R. 18, 57; App. E].

(11) The refusal of the Companies thereafter, and to the present time, to employ Carpenters in the work prescribed in said December 26, 1945, decision and award, and the discharge of approximately twelve hundred Carpenters from their employment, and the substitution of IATSE members and permittees for them in carpenters' work, as alleged in paragraph XXVI [R. 17]. A copy of an "Emergency Working Card" issued to permittees by said IATSE, is attached to plaintiffs' complaint, as Exhibit "E" [R. 56].

(12) The plaintiffs have always been ready, willing and able to perform the work tasks as aforesaid, in accordance with said contract, but the defendant Companies and IATSE, acting in concert, have refused to abide thereby, as alleged in paragraphs XXX and XXXI [R. 19].

The Conspiracy.

The second cause of action, after adopting the allegations of the first, alleges the conspiracy of defendant Companies and defendant IATSE in said contract violations, and in said encroachments upon the carpenters' work belonging to the carpenters under said contracts, award and clarification [R. 22-27]. The entire second cause of action of the complaint is set forth in appendix E.

This conspiracy, between respondents, IATSE and the Motion Picture Companies, interferes with "the continued and uninterrupted flow of interstate commerce in the motion picture industry under the good faith observance of

said contracts and arbitration determination," as alleged in paragraph XXXIV [R. 21].

The complaint alleges, in paragraph XXXII [R. 20], that the controversy arises from the acts and conduct of the defendant IATSE, and the accession thereto of the defendant Companies, as follows:

> "The controversy alleged herein arises from the acts and conduct of defendants I.A.T.S.E., Walsh, and Brewer in claiming, demanding, and enforcing, by coercion and other devices, including the threat to close every motion picture theatre on the continent by calling out on strike all moving picture projectionists belonging to said union, their claim to the right to provide members of I.A.T.S.E. and non-union 'permittees' of said union to do the work allocated to plaintiffs by the aforesaid Decision and Award and the clarification thereof, by historical custom and usage, and by the terms and provisions of agreements alleged hereinbefore, and the accession to said demands and the employment of members and 'permittees' of I.A.T.S.E. to do the work of plaintiffs by defendant Motion Picture Companies."

The defendant IATSE repudiated the clarification, that is, the December 26, 1945, decision, in its original intention, as shown by Exhibit "I." [R. 25; App. "G."]

The Controversy.

The controversy involves the construction and interpretation of the terms and provisions of these contracts, agreements, decisions, findings and awards, and the rights, privileges and immunities of plaintiffs thereunder, and under the Constitution and laws of the United States, as alleged in paragraph XXXIII [R. 20].

This controversy is actual and involves the public interest, as alleged in paragraph XXXIV. (21)

The declaratory relief sought is the only remedy available to plaintiffs to maintain:

(1) Their constitutional and legal right to work at their chosen vocations;

(2) Their constitutional and statutory right to work under said contracts, decisions, findings, and award;

(3) The continued and uninterrupted production of Motion Pictures in the studios under the good faith observance of said contracts and arbitration determination;

(4) The continued and uninterrupted flow of Interstate Commerce, in the Motion Picture Industry, under the good faith observance of said contracts and arbitration determination;

(5) The maintenance of law and order, observance of said contracts and arbitration determination, as is alleged in paragraph XXXIV [R. 21].

A state of emergency exists and can only be relieved by declaratory judgment, binding upon all parties, as is alleged in paragraph XXXV [R. 22].

Laws Involved.

This case involves the following laws, which are set forth in Appendix B.

1. The Fifth Amendment to the Constitution.

2. R.S. 1980, as amended (8 U. S. C. 47) upon conspiracy to interfere, and interference, with civil rights.

3. R.S. 722, as amended (28 U. S. C. 729) upon proceedings in vindication of civil rights.

4. The National Labor Relations Act, Section 7, upon the right of employees to organize, to bargain collectively, and to engage in concerted activities for bargaining, mutual aid and protection; as said section has been reenacted within Section 7 of the Labor-Management Relations Act of 1947.

5. Judicial Code, Section 24, paragraphs 1, 8, 12, as amended (28 U. S. C. 41(1), (8), (12)), upon the original jurisdiction of District Courts.

6. Judicial Code, Section 274d, as amended (28 U. S. C. 400), authorizing declaratory judgments.

7. Remedial Section 301 of the Labor-Management Relations Act of 1947, giving jurisdiction in suits for "violation of contracts" both "between an employer and a labor organization representing employees in an industry affecting commerce * * * and "between any such labor organizations, * * * without regard to the citizenship of the parties."

Questions Involved.

The questions involved are:

1. Whether the United States District Court had jurisdiction in this suit, for declaratory relief only, without diversity of citizenship, because the case arose under the Fifth Amendment to the Constitution and said laws of the United States, as alleged in paragraphs VIII, IX, X and XXXIV 4 [R. 7, 21].

2. Whether jurisdiction has since been conferred by remedial Section 301 of the Labor-Management Relations Act of 1947. [App. E.]

Non-Resistance by Brotherhood of Carpenters.

The defendant United Brotherhood of Carpenters and Joiners of America appeared, and in the appearance stated that it "does not contest the granting of the prayer of plaintiffs' amended complaint." [R. 68.]

Wherefore your petitioners pray that a writ of certiorari may be issued by this Court.

Respectfully submitted,

ZACH LAMAR COBB,
Attorney for Petitioners.

March 30, 1948.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. .....

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN L. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. ZELL and EDWARD DERHAM, on Behalf of Themselves and All Others Similarly Situated,

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THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, LOEW'S INCORPORATED, PARAMOUNT PICTURES, INC., WARNER BROTHERS PICTURES, INC., COLUMBIA PICTURES CORPORATION, SAMUEL GOLDWYN PRODUCTIONS, INC., REPUBLIC PRODUCTIONS, INC., HAL E. ROACH STUDIO, INC., TECHNICOLOR MOTION PICTURE CORPORATION, TWENTIETH CENTURY FOX FILM CORPORATION, R. K. O. RADIO PICTURES, INC., UNIVERSAL PICTURES COMPANY, INC., and ASSOCIATION OF MOTION PICTURE PRODUCERS, INC.,

Respondents.

BRIEF IN SUPPORT OF FOREGOING PETITION FOR A WRIT OF CERTIORARI.

Opinion Below.

The opinion in the District Court is reported in 70 Fed. Supp. 1008 [R. 122; App. A]. The *per curiam* opinion of the said Circuit Court of Appeals is not yet reported, but is found in the record [R. 143], as follows:

> "For the reason stated in its opinion (70 F. Supp. 1008), the judgment of the District Court is affirmed."

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on January 16, 1948 [R. 144]. The jurisdiction of this Court is invoked under Section 240 of the Judicial Court, as amended (28 U. S. C., Sec. 347).

Statement of the Case.

A statement of the case has been given in the foregoing petition (*supra* 2), and is referred to so as to avoid repetition.

Specifications of Error.

The specifications of error presented in the Circuit Court are here adopted as follows:

> "1. The court erred in its judgment dismissing this action for lack of jurisdiction, for the reason that the court had jurisdiction under Section 400, Title 28, United States Code Annotated; Sections 41(1), 41(8), 41(12), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United States Code Annotated; Sections 43 and 47(3), Title 8, United States Code Annotated; Section 157, Title 29, United States Code Annotated; and each of them; and the Constitution of the United States, Amendments V and XIV.
>
> "2. The court erred in its judgment dismissing this action for lack of jurisdiction, for the reason that this suit is of a civil nature which arises under the Constitution and Laws of the United States, particularly under the Act of Congress of July 5, 1935, commonly referred to as the National Labor Relations Act, and the laws of the United States re-

lating to interstate commerce, and was instituted pursuant to the provisions of said National Labor Relations Act, and laws of the United States relating to interstate commerce, and also under the general equity jurisdiction of the court.

"Appellants will aso ask consideration of the provisions of the Labor-Management Relations Act of 1947, in the event it shall have become law pending appeal."

ARGUMENT.

Attention is called to these statements in the memorandum opinion of the District Court, as quoted in the petition (*supra* 2-4):

(1) "This action for a declaratory judgment is brought by sixteen individuals, members of the United Brotherhood of Carpenters and Joiners of America (hereinafter called Carpenters), on behalf of themselves and others similarly situated," [R. 122, App. 49], as they apply to all points in argument.

(2) To "determine and to protect against alleged conspiracy their rights under certain agreements entered into between the motion picture studios, Carpenters, the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada (hereinafter called Stagehands)," the IATSE. [R. 122, App. 49.]

(3) "Thus, we have an action in which private individuals ask this court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other." [R. 122, App. 49.]

(4) "The defendant studios and Stagehands have moved to dismiss on the grounds that: (1) this court lacks jurisdiction;" [R. 122, App. 49.]

(5) "The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship." [R. 122, App. 49.]

The memorandum opinion of the Court, ordering the case dismissed "for want of jurisdiction" [R. 128, App. 55] contains this statement of the issue [R. 123, App. 50]:

(6) "* * * Plaintiffs allege (paragraph VIII):

"'Jurisdiction of this Court is vested by virtue of Section 400, Title 28, United States Code Annotated; Section 41(1), 41(8), 41(2), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United States Code Annotated; Sections 43 and 47(3), Title 8, United States Code Anontated; Section 157, Title 29, United States Code Annotated; and the Constitution of the United States, Amendments V and XIV.'

"If the case does not fall within the terms of one or more of these statutes or amendments to the Constitution, the court must dismiss the action for want of jurisdiction."

After a discussion of the Fifth Amendment and the respective statutes the Court concluded:

(7) "* * * Therefore, this suit does not arise under the Constitution or laws of the United States, and this court lacks jurisdiction." [R. 128, App. 55.]

Upon this issue of jurisdiction on the date of dismissal, and upon the additional question of jurisdiction now under remedial section 301 of the Labor-Management Relations Act of 1947, this petition is respectfully presented.

POINT I.

The Court Had, and Has Jurisdiction Without Diversity of Citizenship, if the Fifth Amendment and Related Laws Guarantee the Civil Right to Work Under Contracts, and to Negotiate Under the Terms Thereof, in Accordance With Section 7 of the National Labor Relations Act, as Amended, Free From Conspiracy and Interference by Private Parties.

The statement of the court in (1) to (7), inclusive, as quoted at the beginning of argument (*supra*), shows the nature of the suit, the relief sought, and the issue of whether the court has jurisdiction, without diversity of citizenship, because the case arises under the Constitution and laws of the United States. Particular attention is called to (3), showing that petitioners asked the court

> "* * * to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other."

The memorandum opinion of the District Court, in dismissing the case for want of jurisdiction [R. 126, App. 53], states:

> "In Gully v. First National Bank, 299 U. S. 109, 81 L. Ed. 70, 57 S. Ct. 96, Mr. Justice Cardozo said, at page 112:
>
> " 'To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. * * * The right or immunity must be such that it will be

supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another.' "

No higher authority can be cited than an opinion written by the late Justice Cardozo, but the law, as so stated, should be given its correct meaning as it applies to the allegations of the complaint in this case.

1. The Fifth Amendment Guarantees a Person's Liberty and Property: (a) in the Right to Work; and (b) in the Right to Negotiate and Contract, Under the National Labor Relations Act, as Reenacted in the Labor-Management Relations Act of 1947.

Constitution, Amendment V:

"No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *"

Nissen v. International Brotherhood of Teamsters, etc., et al., 229 Iowa 1028, 295 N. W. 858; 141 A. L. R. 598, at page 614:

"* * * their rights under this contract with their employer were valuable property rights of which they were wrongfully deprived by the acts of the defendants. Such rights are guaranteed by the Fifth Amendment of the Federal Constitution. Cameron v. International Alliance, etc., 118 N. J. Eq. 11, 176 A. 692, 696, 97 A. L. R. 594. 'There is no more sacred right of citizenship than the right to pursue umolested a lawful employment in a lawful manner. It is nothing more or less than the sacred right of labor.' "

Roseland v. Phister Mfg. Co., 125 F. (2d) 417 at 419:

"The language of the statute (Sherman Act) * * * includes any person who shall be injured in his business or property. * * * In a somewhat more truly economic, legal and industrial sense, it includes that which occupies the time, attention, and labor of men for the purpose of livelihood or profit,—persistent human efforts which have for their end pecuniary reward. It denotes 'the employment or occupation in which a person is engaged to procure a living.' Allen v. Commonwealth, 188 Mass. 59, 74 N. E. 287, 288, 69 L. R. A. 599."

Schneider v. Duer, et al., 170 Md. 326, 184 Atl. 914 at 919:

"The right to engage in useful and productive labor is common to all men, Dasch v. Jackson (Md.), 183 A. 534, 538, and in a constitutional sense is property of which one may not be deprived except by due process of law. * * *"

Carroll, et al. v. Local No. 269 International Brotherhood of Electrical Workers, et al., 133 N. J. Eq. 144, 31 A. (2d) 223 at 224:

"It is not inappropriate, however, to remark that the right to earn a livelihood is a property right which is guaranteed in our country by the fifth and fourteenth amendments of the federal constitution, * * *"

Bautista v. Jones, 25 Cal. (2d) 746 at 749:

"The right to work, either in employment or independent business, is fundamental and, no doubt, enjoys the protection of the personal liberty guarantee of the Fourteenth Amendment to the federal Constitution, as well as the more specific provisions of our state Constitution. * * *"

2. The Right to Negotiate a Formal Agreement, Under Section 7 of the National Labor Relations Act, as Amended, and as So Provided in the Exhibit "A" Interim Agreement, Is Also a Property Right Guaranteed by These Amendments.

Merit Oil Co. v. Director of Division of Necessaries of Life, 319 Mass. 301, 63 N. E. (2d) 529 at 530:

> "The right of every citizen to enjoy liberty and to acquire and possess property, including the right to engage in any lawful private business or occupation, is protected * * * by the Fourteenth Amendment to the Constitution of the United States. And the right to engage in such a business or occupation carries with it the making of contracts, * * *"

Morris v. Holhouser, 220 N. C. 293, 17 S. E. (2d) 115 at 117, is quoted freely because of the cases it cites:

> "The privilege of contracting is both a liberty and a property right. State Street Furniture Co. v. Armour & Co., 345 Ill. 160, 177 N. E. 702, 76 A. L. R. 1298. The right to contract is recognized as being within the protection of the Fifth and Fourteenth Amendments to the Constitution of the United States, Bayside Fish Flour Co. v. Gentry, 297 U. S. 422, 56 S. Ct. 513, 80 L. Ed. 772; Ex parte Hayden, 147 Cal. 649, 82 P. 315, 1 L. R. A., N. S., 184, 109 Am. St. Rep. 183; West Coast Hotel Co. v. Parrish, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A. L. R. 1330; Highland v. Russell Car & Snow Plow Co., 279 U. S. 253, 49 S. Ct. 314, 73 L. Ed. 688; 11 Am. Jur. 1154, 1156; and protected by state Constitutions. McGuire v. Chicago, etc. Railway, 131 Iowa 340, 108 N. W. 902, 33 L. R. A., N. S., 706. 'It has been held that the right to make contracts is embraced in the conception of liberty as guaranteed by the Constitution.' Chicago, B. & Q. R. Co. v. Mc-

Guire, 219 U. S. 549, 31 S. Ct. 259, 262, 55 L. Ed. 328. 'Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property.' Coppage v. aKnsas, 236 U. S. 1, 35 S. Ct. 240, 243, 59 L. Ed. 441, L. R. A. 1915C, 960. 'The freedom of the right to contract has been universally considered as guaranteed to every citizen.' Stephens v. Hicks, 156 N. C. 239, 72 S. E. 313, 316, 36 L. R. A., N. S., 354, Ann. Cas. 1913A, 272."

3. Petitioners' Federal Rights Under Section 7 of the National Labor Relations Act, as Reenacted in the Labor-Management Relations Act of 1947, Are Entitled to a Federal Remedy in the Federal Courts.

Texas & N. O. R. Co. v. Brotherhood Ry. & S. S. Clerks, 281 U. S. 548, 569 (50 S. Ct. 427; 74 L. Ed. 1034):

"* * * in each instance a legal obligation is created and the statutory requirements are susceptible of enforcement by proceedings appropriate to each. The same is true of the prohibition of interference or coercion in connection with the choice of representatives. The right is created and the remedy exists. *Marbury v. Madison,* 1 Cranch. 137, 162, 163, 2 L. ed. 60, 68, 69."

Marbury v. Madison, 1 Cranch. 137 (2 L. Ed. 60, 69), amplifies this all important principle of law with the following statement, at 163:

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."

POINT II.

The District Court Had, and Has, Original Jurisdiction, Under Judicial Code Section 24(1)(8) (28 U. S. C. 41(1)(8)), Because This Case Arises Under the National Labor Relations Act, as Reenacted in the Labor-Management Relations Act of 1947.

Judicial Code, Section 24 (28 U. S. C. 41):

"* * * Original jurisdiction. The district courts shall have original jurisdiction as follows:

"(1) United States as plaintiff; civil suits at common law or in equity. First. Of all suits of a civil nature, at common law or in equity, * * * where the matter in controversy exceeds, exclusive of interests and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, * * *"

"(8) Suits for violation of interstate commerce laws. Eighth. Of all suits and proceedings arising under any law regulating commerce."

1. **Petitioners' Long-standing Contract Between Their Union, Local 946, and the Respondent Companies, as Extended and Now Existing in the Exhibit "A" Contract of July 2, 1946, Was Negotiated Under the National Labor Relations Act, Section 7 (29 U. S. C. 157).**

"§157. Right of employees as to organization, collective bargaining, etc.

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Paragraphs VIII and IX [R. 9], of petitioners' complaint, being concise in alleging the contracts, are respectfully set forth as follows:

> "XIII. Since the beginning of the making of motion pictures in the Southern District of California, and until events related hereinafter, plaintiffs and the class for which they sue have been employed by defendant Motion Picture Companies under the terms of suceeding contracts for the performance of any and all carpenter work in connection with the making of motion pictures, including the construction of all sets and stages, platforms, buildings, and parts of building, the operation of all wood working machinery and tools, the making of all furniture and wood fixtures, the performing of all trim and mill work, the erection, modeling and remodeling, destruction and dismantling of all scaffolds, platforms, frames, buildings and streets, and the performance of all labor involving the use of carpenter tools.
>
> "XIV. A basic agreement between defendant Motion Picture Companies and defendant Carpenters Union covering rates of pay, tenure, seniority, vacations, and other terms and conditions of employment and giving members of said Carpenters Union the exclusive right to do any and all carpenter work for said companies was agreed to and executed on or about November 29, 1926, and has been continued in effect by the parties with periodic adjustments, supplements, and amendments up to the present time;
>
> "The current contract between said defendants, referred to as the Beverly Hills Interim Agreement of July 2, 1946, is attached here to as Exhibit "A" and incorporated herein by reference."

2. Petitioners Work in the Studios, Under Said Contract, Was a Necessary Link in the Making of Motion Pictures for Interstate Commerce.

Paragraph XXXIV of the complaint [R. 21] alleges that:

> "The declaratory relief sought herein is the only remedy available to plaintiffs to maintain."
>
> "4. The continued and uninterrupted flow of interstate commerce in the motion picture industry under the good faith observance of said contracts and arbitration determination;"

It is also alleged in Paragraph IX [R. 7], for the purposes of Section 24(1) of the Judicial Code that:

> "The matter in controversy herein, being the right to work for wages, exceeds the value of Three Thousand Dollars ($3,000.00), exclusive of costs and interest, as to each plaintiff herein, and arises under the Constitution and laws of the United States."

3. Petitioners Have a Federal Right Under Said Labor Law to Their "Wage Scales, Hours of Employment and Working Conditions," as Provided in Said Exhibit "A" Contract.

The current contract is found in the Exhibit "A" interim agreement [*supra,* R. 29-34; App. C, 59]. It covers "wage scales, hours of employment and working conditions" [R. 33; App. 64]. This interim agreement was negotiated for petitioners, and the other Carpenters for whom they sue, by their union, Carpenters Hollywood Studio Local 946 [R. 33; App. 59, 64], under Section 7 of the National Labor Relations Act (29 U.S.C. 157):

J. I. Case Co. v. Nat. Lab. Rel. Bd., 321 U. S. 332, 334 (64 S. Ct. 576; 88 L. Ed. 762):

> "* * * Collective bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. * * *"

4. Petitioners Also Have a Federal Right Under Said Labor Law to Their Employment, as Provided in Said Exhibit "A" Contract, and as Confirmed With Their Compliance Therewith.

The agreement contains the provisions for "all crafts going back to work on Wednesday a. m., July 3, 1946." [R. 34; App. 63.] This provision constitutes an employment contract.

Standard Oil Co. v. Lyons, 130 F. (2d) 965, 968:

> "In a contract between master and servant, formality is not essential. 'It may be accomplished with few words, or may be implied from conduct without words. Pfister v. Doon Elec. Co., 199 Iowa 548, 202 N. W. 371, 374. An offer for a bilateral contract requires an acceptance by the offeree to make the contract. The effect of acceptance is to convert the offer into a binding contract. Acceptance by the offeree may be inferred from any words indicating assent to the offer. * * * We think the words used were sufficient to constitute a bilateral contract. In effect, Bergstedt asked for a promise that Lyons would be to work on Monday, and Mrs. Lyons gave him that promise."

That the employment contract was ratified by the Carpenters is amply alleged in paragraphs XIII and XIV [R. 9-10, 19-20; *supra* 23].

5. Petitioners Also Have a Federal Right, Under Said Labor Law to Continue Negotiations With the Companies, as Provided in Said Contract.

The Exhibit "A" agreement consists of the minutes of a meeting of the Producers Labor Committee, attorneys and respentatives of the Conference of Studio Unions (including the Carpenters Union), the Central Labor Council, the respondent IATSE, and others, held in Beverly Hills, on Tuesday, July 2,. 1946, "covering agreements reached and effective pending the formal signing of contracts." This statement in the caption to the minutes was re-stated by this sentence in the minutes: "An interim agreement will be entered into pending drawing up formal agreements." [R. 29; App. 60.]

This interim agreement was so "entered into pending drawing up formal agreements" by the letter from Pat Casey, Chairman of the Producers Committee, to the President of the Conference of Studio Unions, which included petitioners' Carpenters Union Local 946, on said July 2, 1946, as follows [R. 28; App. 59]:

> "Pending the completion of contracts between the individual unions, members of the C. S. U., and the major studios, these Minutes (copy attached herewith) shall constitute an Interim Agreement."

6. The Respondent Companies, in Conspiracy With the IATSE, Violated Said Federal Rights of Petitioners, by Their Breach of Said Contract, and by Their Mass Dismissal of the Carpenters.

In violation of this agreement, the respondent Companies discharged the Carpenters from their employment, and substituted IATSE members and permittees, for them in their carpenters' work.

The breach of said contract by the respondent Companies, acting in concert, is alleged in paragraph XXXI [R. 19].

The conspiracy of the respondent Companies, and respondent IATSE, is alleged in the second cause of action [R. 22-26; App. F, 74].

The discharge of twelve hundred carpenters by the respondent Companies, in violation of said contracts, is alleged in paragraph XXVI [R. 17].

7. Petitioners, Therefore, Have a Cause of Action, in the Jurisdiction of the Federal Court, to Protect Their Said Rights.

Steele v. Louisville & Nashville R. R. Co., 323 U. S. 192, 200 (65 S. Ct. 226, 89 L. Ed. 173):

> "* * * As we have pointed out with respect to the like provision of the National Labor Relations Act in J. I. Case Co. v. National Labor Relations Bd., *supra* (321 U. S. 338, 88 L. Ed. 768, 64 S. Ct. 576): 'The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group. Its benefits and advantages are open to every employee of the represented unit' * * *"

Texas & N. O. R. Co. v. Brotherhood Ry. & S. S. Clerks (*supra* 21);

Marbury v. Madison (*supra* 21).

POINT III.

The Court Also Had, and Has, Original Jurisdiction, Under Said Judicial Code Section 24, to Act Upon the December 26, 1945, Award of the A. F. of L. Arbitration Committee, and to Enforce the Committee's Unanimous Agreement in It to Observe the Historic, and Existing, Division of Work Between the Carpenters and IATSE, and the Committee's August 16, 1946 Clarification of Said Unanimous Decision.

Reference is made to *California State Brewers' Institute v. International Brotherhood of Teamsters, etc.*, 19 F. Supp. 824(1), and to *Green v. Obergfell*, 12 F. (2d) 46(17), upon the authority of the A. F. of L., and its Executive Council.

1. At the Time of the December 26, 1945, Award, the Carpenters Were Engaged in Their Historic Work, Under Their Contracts, Pursuant to the Cincinnati October, 1945, Agreement "That All Employees Return to Work Immediately."

Reference is made to following paragraphs of the complaint:

To paragraph XIX [R. 12], showing the Cincinnati agreement between the Companies, IATSE and Carpenters including provision that:

> "1. The Council directs that the Hollywood strike be terminated immediately.
>
> "2. That all employees return to work immediately."

Paragraph XX [R. 13], showing the return of the Carpenters to their historic work pursuant thereto.

2. Immediately After Said December 26, 1946, Award, in January, 1946, Said Unanimous Decision of the Arbitration Committee to Follow the Historic Division of Work, Was Violated by the Companies, in Conspiracy With the IATSE, in Discharging Carpenters From Their Historic Work, and in Replacing Them With IATSE Members and Permittees.

Reference is made to paragraph XXV [R. 16], showing the immediate misinterpretation and misapplication of said award by the respondent Companies, and IATSE, in the discharge during January, 1946 of approximately five hundred Carpenters from their historic work, and existing employment, and substitution of IATSE members and permittees in their places.

3. Said Breach of the Award, by the Conspiring Companies and the IATSE, Made It Necessary for the A. F. of L. Arbitration Committee to Issue Its August 16, 1946, Clarification, to Carry Out Its Original Unanimous Agreement to Observe the Historic Division of Work, and Its Intention That Its Award of December 26, 1945, Have That Effect.

Reference is made to the following paragraphs of the complaint:

To paragraph XXVII [R. 17], showing the necessity for, and issuance of, the August 16, 1946 clarification by said A. F. of L. Committee, to state the true intention of said December 26, 1945 award. [App E, 72.]

To paragraph XXVIII [R. 18], showing the effort of President Green, of the A. F. of L., to bring about the acceptance and observance of said award and clarification.

4. Thereafter, Pursuant to Conspiracy, the IATSE Repudiated Said August 16, 1946, Clarification, and Thereby Repudiated the Intent of the December 26, 1945, Award; and the Respondent Companies, Acting in Conspiracy With the IATSE Conducted Their Mass Dismissal of an Additional Twelve Hundred Carpenters, and Turned Their Historic Work Over to the IATSE for Its Members and Permittees.

Reference is made to the following paragraphs in the complaint:

To Paragraphs XXIX and XXX [R. 19], showing the observance, by the Carpenters, of the contract, and the award, as clarified:

To Paragraph XXXI [R. 19], showing the failure and refusal of the respondents, IATSE and Companies, to abide thereby.

To Paragraph VII of the second cause of action [R. 25], showing the repudiation by the IATSE of the clarification [App. F, 77; G, 80]; and

To Paragraph XXVI of the first cause of action [R. 17], showing the mass discharge by the respondent Companies of approximately twelve hundred Carpenters from their employment, and the substitution for them by IATSE members and permittees.

POINT IV.

The District Court Also Has Original Jurisdiction Under Remedial Section 301(a) of the Labor-Management Relations Act of 1947 (29 U. S. C. (Supp.) 185 (a)):

"§185. Suits by and against labor organizations—Venue, amount, and citizenship.

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

1. Section 301 of the Labor-Management Act, Being Remedial, Is Retroactive in Its Application to This Suit.

Funkhouser v. J. B. Preston Co., 290 U. S. 163 (54 S. Ct. 134, 78 L. Ed. 243) at 167:

"* * * The statute in question concerns the remedy and does not disturb the obligations of the contract. (Citing cases.) The contractual obligation of appellants was to take and pay for the described articles, and the law, in force when the contract was made, required that in case of breach appellants should make good the loss sustained by the appellee. The ascertainment of that loss, and of what would constitute full compensation, was a matter of procedure within the range of due process in the enforcement of the contract. 'To enact laws providing remedies for a violation of contracts' and 'to alter or enlarge those remedies from time to time,' was with-

in the competency of the legislature. Waggoner v. Flack, 188 U. S. 595, 47 L. ed. 609, 23 S. Ct. 345, *supra*. The mere fact that such legislation is retroactive does not bring it into conflict with the guaranties of the Federal Constitution (League v. Texas, *supra* (184 U. S. p. 161, 46 L. ed. 481, 22 S. Ct. 475) and when the action of the legislature is directed to the enforcement of the obligations assumed by the parties and to the giving of suitable relief for non-performance, it cannot be said that the obligations of the contract have been impaired. The parties make their contract with reference to the existence of the power of the State to provide remedies for enforcement and to secure adequate redress in case of breach. Henley v. Myers, 215 U. S. 373, 54 L. ed. 240, 30 S. Ct. 148, *supra*."

Larkin v. Saffarans, 15 Fed. 147 at 150:

"* * * And the rule is that 'where the enactment deals with procedure only, unless the contrary be expressed, the enactment applies to all actions, whether commenced before or after the passing of the act.' Broom, Legal Max. 35; Wright v. Hale, 6 Hurl. & N. 227; Kimbray v. Draper, L. R. 3 Q. B. 160.

"This is only in accordance with the general rule that all remedial legislation shall be liberally construed, and particularly should this be so where new remedies are given, and with reference to the bestowal of jurisdiction on the courts. * * *"

Federal Reserve Bank of Richmond v. Kalin, 77 F. (2d) 50 at 51:

"* * * It is clear that the grant of jurisdiction given by the statute applies to causes of action in

existence at the time of its passage as well as to those subsequently arising. 'Statutes relating to practice and procedure generally apply to pending actions and those subsequently instituted, although the cause of action may have arisen before.' Link v. Receivers of Seaboard Air Line Ry. Co. (C. C. A. 4th), 73 F. (2d) 149, 151; Hallowell v. Commons, 239 U. S. 506, 36 S. Ct. 202, 60 L. Ed. 409; Baltimore & P. R. Co. v. Grant, 98 U. S. 398, 25 L. Ed. 231.

"For the reasons stated, we think that the court below had jurisdiction of the action, and that the order dismissing it should be reversed."

Connett et al. v. City of Jerseyville, 96 F. (2d) 392 at 400:

"It is conceded that, as a general rule, a statute will not be given a retroactive effect unless it clearly appears that it was the intention of the legislature so to do; nor will it be done if it will disturb or interfere with vested or substantive rights. However, a curative or remedial enactment which merely affects the remedy or procedure will be given a retroactive effect. Funkhouser v. J. B. Preston Co., 290 U. S. 163, 54 S. Ct. 134, 78 L. Ed. 243; McKinley v. McIntyre, 360 Ill. 382, 196 N. E. 506; Berkovitz v. Arbib & Houlberg, Inc., 230 N. Y. 261, 130 N. E. 288."

2. Petitioners Have the Right to Sue, Under Section 301(a) of the Labor-Management Relations Act of 1947, on Contracts Negotiated for Them by Their Union, Local 946.

J. I. Case Co. v. National Lab. Rel. Bd., 321 U. S. 332, 336 (64 S. Ct. 576, 88 L. Ed. 762):

> "But, however engaged, an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary to all benefits of the collective trade agreement, * * *."

Beck v. Reynolds Metals Co., 163 F. (2d) 870 at 871:

> "The sole question for our determination is whether the plaintiff had a right to sue the defendant under this contract. The plaintiff is not a formal party to the contract, nor is he mentioned anywhere therein. One does not have to be a formal party to a contract nor be mentioned therein to have a right to sue thereon, nor does the promise have to be for the sole benefit of the third party who attempts to sue, if it is the intention of the formal parties to the contract to make it for his direct or substantial benefit. (Citing cases.)"

Schlenk v. Lehigh Valley R. Co., 74 Fed. Supp. 569 at 571:

> "* * * Such a collective bargaining agreement is the joint and several contract of the members of the union, made by the officers of the union as their agents, and is enforceable against one for whose general benefit such agreement was made, even though it resulted in no benefit to such individual. Hartley v. Brotherhood of Railway and Steamship Clerks, etc., 283 Mich. 201, 277 N. W. 885."

POINT V.

Having Original Jurisdiction Under Said Laws of the United States, the District Court Had, and Has, Jurisdiction in This Case for Declaratory Relief Only, Under Judicial Code 274d (28 U. S. C. 400).

The statement of the court in (1), (2) and (3), as quoted at the beginning of argument, shows the nature of the suit and the relief sought.

1. **Section 274d of the Judicial Code (28 U. S. C. 400), Expressly Authorizes Declaratory Relief "Whether or Not Further Relief Is or Could Be Prayed," and, Therefore, Gives the District Court Jurisdiction in This Case for Declaratory Relief Alone, Subject Only to the Court Having Original Jurisdiction Under the Constitution on Laws of the United States.**

Section 274d (28 U. S. C. 400, Supp.):

> "Declaratory judgments authorized; procedure.
>
> "(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such."

2. The Controversy Over These Contracts Is Actual, Involves the Rights of the Petitioners, and Other Carpenters in Their Local 946, and in the Interstate Commerce of the Motion Picture Industry.

Paragraph XXXIV [R. 21] alleges:

"The controversy is actual and involves more than the rights of these plaintiffs and of the thousands of persons of the class for whom they sue but involves the rights of each and every party hereto; and, in addition to said individual rights, this controversy gravely and seriously involves the public interest:

"The declaratory relief sought herein is the only remedy available to plaintiffs to maintain:

"1. The Constitutional and legal right of these plaintiffs, and of their class, and all others involved directly or indirectly, to work at their chosen vocations;

"2. The Constitutional and statutory right of plaintiffs to perform and of all other parties hereto to have performed that labor prescribed under the contracts, decisions, findings and awards alleged herein;

"3. The continued and uninterrupted production of motion pictures in said studios under the good faith observance of said contracts and arbitration determination;

"4. The continued and uninterrupted flow of interstate commerce in the motion picture industry under the good faith observance of said contracts and arbitration determination; and * * *."

3. The Courts Have Upheld Federal Jurisdiction to Construe Contracts in Suits for Declaratory Relief Alone.

Mississippi Power & Light Co. v. City of Jackson, 116 F. (2d) 924, was a suit for declaratory judgment "determining plaintiff's rights under a contract with defendant" (p. 924) where the court "entered an order dismissing the cause for want of jurisdiction" (p. 925). The court held:

> "While the declaratory judgment act has not added to the jurisdiction of the federal courts. it has added a greatly valuable procedure of a highly remedial nature. Extending by terms to all cases of actual controversy 'except with respect to Federal taxes,' it should be, it has been given a liberal construction and application to give it full effect. * * *" (p. 925.)
>
> "An authoritative determination as to the present status of the contract and of the rights and duties of the parties under it is essential in the interests of both city and company and of the public that both serve. For such a case, the declaratory judgment act is made to order. * * *" (p. 926.)

4. Loew's, Inc., Sought and Obtained Federal Court Jurisdiction, in Its Suit for Declaratory Relief Against a Local Union of the IATSE, to Protect It From IATSE Threats and Conspiracy Similar to the Threats and Conspiracy in This Case.

Loew's Incorporated v. Basson, et al., 46 F. Supp. 66, was a civil action, brought by Loew's against an IATSE local to protect itself against IATSE threats there similar to the threats here, and to resist a conspiracy with the IATSE there similar to Loew's own conspiracy with

the IATSE here. Beginning on page 69, the opinion there states:

> "The complaint seeks a declaratory judgment pursuant to Section 274d of the Judicial Code, 28 U. S. C. A. §400; (a) that the demands of the defendant are illegal and contrary to law and compliance therewith by plaintiff is prohibited by law; (b) that in making these demands, defendant is not, and in enforcing said demands by strikes or other means of economic compulsion, defendant would not be a person participating in a labor dispute within the meaning of the Norris-LaGuardia Act; (c) that a contract between plaintiff and defendant which would include the terms and conditions set forth in defendant's letter of December 11, 1941, would be a contract in restraint of trade in violation of the Sherman Anti-Trust Act; (d) that compliance with defendant's demand would be a violation of the consent decree in United States v. Paramount Pictures, Inc., and (e) that if all of the distributors would comply with defendant's demands, a conspiracy would result which would constitute a violation of the Sherman Anti-Trust Act, * * * §1. The complaint also seeks a permanent injunction enjoining the defendant from taking any steps to call strikes and inducing 'IATSE' to call strikes."

The court upheld its jurisdiction.

5. The Principle Presented in This Case Was Determined by the Fifth Circuit in the Texoma Case, Where a Certiorari Was Denied.

Oil Workers International Union, et al. v. Texoma Natural Gas Co., 146 F. (2d) 62, is a suit for declaratory relief upon a controversy that arose under "the rights

of the parties under a contract entered into by the appellee and Oil Workers International Union, Local No. 463, as bargaining agent for appellee's employees" to determine whether the employer "had the right under the contract to change from 2 40-hour week to a 48-hour week without negotiating an amendment to the contract with the Union."

In this case, at page 65, the Court held that:

> "The court below found that the controversy between the parties related to their legal rights and liabilities under their contract; that the parties had taken adverse positions with respect to their respective rights and obligations; that, therefore, a justiciable controversy existed, appropriate for judicial determination under the Declaratory Judgment Act. We agree. An employer may establish the seniority rights of an employee in dispute with other employees, as well as general rights which their contract relationship establishes, without waiting to be sued for breach or for damages or for specific performance, and thus secure an 'interpretation of the contract during its actual operation' and stabilize an 'undertain and disputed relation.' Exhaustion of the administrative remedies granted by the War Labor Disputes Act, 50 U. S. C. A. Appendix §1501 *et seq.*, and Executive order No. 9017, of January 12, 1942, 50 U. S. C. A. Appendix §1507 note, to employer and employee is not a prerequisite to the bringing of a court action by either party for an alleged violation by the other of a labor agreement.
>
> "The judgment appealed from is correct. It is accordingly affirmed." Certiorari was denied, 324 U. S. 872.

POINT VI.

The Court Should Take Jurisdiction in This Case to Afford a Federal Remedy for Federal Rights Under the National Labor Relations Act, as Amended, and to Reconcile Decisions That Conflict in Principle.

While There May Not Be Complete Conflicts Between the Decision in This Case and Decisions in Other Circuits, There Are Conflicts in Principle.

In the case of *Oil Workers International Union Local 463, et al. v. Texoma Natural Gas Co.* (*supra*), in the Fifth Circuit, diversity of citizenship was pled, but the issue was with the nation-wide CIO upon rights in a contract negotiated under Section 7 of the National Labor Relations Act (*supra*).

In the case of *Loew's Incorporated v. J. H. Basson,* individually, and as President of his unincorporated Local Union 306, in the District Court for the Southern District of New York (*supra*), diversity of citizenship was likewise pled against Basson and the local IATSE union, as to the nominal defendants. The issue, however, was with the nation-wide, unincorporated, IATSE, against whom there could be no diversity, as is shown by the following quotations from a photostatic copy of the complaint in that case:

> "4. International Alliance of Theatrical Stage Employees and Moving Picture Operators of United States and Canada (hereinafter referred to as 'IATSE'), is a voluntary unincorporated association consisting of more than seven members, the membership of which and of various associations affiliated with it is composed of individuals who engage in the

business and employment of furnishing personal services in the theatrical and motion picture industry.

"5. IATSE conducts its operations, business and affairs, at least in part, through numerous local unions, which are affiliated with it, each of which is a voluntary unincorporated association of more than seven members, having its own officers, by-laws, regulations and assessments. The business of each such local union is restricted to a certain geographical area, and the membership of each is confined to those who work in a particular craft in the industry with which IATSE is identified. One of such local unions is said Local 306, * * *"

"27. On August 31, 1940, the contract between Loew's and Local 306 covering the employment of projectionists in Loew's home office and in its New York exchange expired by its terms, but from said date the said employees have continued to be employed under the terms and conditions of said contract. Subsequently negotiations were had between Loew's and said Local 306 for a renewal of said contract.

"28. On December 11, 1941, Local 306, through its attorney, Mathew M. Levy, addressed a letter to Loew's, as follows:

> " 'Confirming conversation had yesterday with Messrs. Nicholas M. Schenck, Charles C. Moskowitz and yourself, on behalf of Loew's, Inc., on the one hand, and Mr. Joseph D. Basson and the writer, on behalf of Moving Picture Machine Operators' Union, Local 306, on the other hand, please be advised that our client, Local 306, is requesting that the collective agreement, to be executed between our representative clients, shall provide, among other satisfactory conditions of employment, such as wages, hours, working conditions, and term of contract, the following clauses in substance:

"'1. Employer agrees to supply, rent, lease, sell, deliver, license, distribute or provide films in the City of Greater New York only to such exhibitors as employ and continue to employ solely members of Local 306 as projectionists, and the Employer agrees not to supply, rent, lease, sell, deliver, license, distribute or provide film to any exhibitor in the City of Greater New York not employing members of Local 306.'"

"29. Thereafter conferences were had between representatives of Loew's and representatives of Local 306 and of IATSE. At such conferences Loew's was advised that Loew's must fully and immediately comply with the terms and conditions set forth in the said letter of Local 306, dated December 11, 1941, and that if Loew's shall fail so to comply, Local 306 will immediately call out on strike the members of Local 306 who are employed as projectionists in the home office and in the New York exchange of Loew's; that upon the request of Local 306, which will be made immediately, IATSE will call out on strike all the members of Local 306 who are employed as projectionists in the 65 motion picture theatres of the plaintiff in Greater New York; all the members of Local B51 who are employed in Loew's New York exchange, as well as all the members of any of the affiliated unions of the parent organization, IATSE, who are employed in Loew's studio at Culver City, California.

30. If the threats so made as aforesaid are carried out and strikes take place pursuant to such threats in the event Loew's shall fail to comply with the demands made upon it by Local 306 and IATSE, the business of Loew's in all of its branches, *i. e.*, the production, distribution and exhibition of motion pictures, will be seriously and irreparably damaged

and injured and in all likelihood will be brought to a complete standstill during the pendency of such strikes, resulting in money losses alone of millions of dollars.

"31. In addition to the above, IATSE and Local 306, through their spokesman and representatives, have advised the plaintiff and they will make similar demands upon each of the seven other hereinbefore named distributors of motion pictures, and that they will similarly call strikes against any and all of such other distributors as shall fail to comply immediately with said demands."

Upon the foregoing issue, after alleging diversity of citizenship against the nominal defendants, Loew's Incorporated also alleged that the action arose under the Sherman Act and under the consent decree in *U. S. v. Paramount Pictures, Inc., et al.*

"34. Compliance by Loew's with the demands of Local 306 would be in violation of law and of the rights of many other parties and especially in violation of the Act of Congress of July 2, 1890, entitled 'An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,' commonly known as 'The Sherman Anti-Trust Act,' U. S. C. A. Title 15, Section 1, and of the consent decree heretofore made and entered by this Court in the action entitled 'United States of America, plaintiff, against Paramount Pictures, Inc., *et al.*, defendants,' and in violation of plaintiff's contracts with its exhibitors.

"35. The plaintiff is a citizen of the State of Delaware. The defendant Local 306 is a voluntary unincorporated association organized under the laws of

the State of New York and having its office and place of business in the Borough of Manhattan in the City of New York, and the defendant Joseph D. Basson is a citizen of the State of New York, residing in the City of New York in said State. The amount in controversy herein exceeds, exclusive of interest and costs, the sum of $3,000. Also this civil action arises under the Act of July 2, 1890 known as the Sherman Anti-Trust Act, 26 Stat. 209, 15 U. S. C. A., Section 1, and under the Consent Decree which was entered in this court on November 20, 1940 in U. S. v. Paramount Pictures Inc., *et al.*"

Upon the foregoing, Loew's alleged the need for declaratory relief, and prayed a declaratory judgment, as follows:

"36. This is a case of an actual controversy involving civil and property rights as to which this Court, pursuant to Section 274(d) of the Judicial Code, 28 U. S. C. A., Section 400, has jurisdiction to declare rights and other legal relations, and the plaintiff is an interested party petitioning for such a declaration with reference to the demands of the defendant Local 306 and to the threats to enforce the said demands as hereinbefore set forth."

"WHEREFORE, the plaintiff prays:

"1. That this Court enter a declaratory judgment under Section 274(d) of the Judicial Code, 28 U. S. C. A. Section 400, (a) that the aforesaid demands of the defendants are illegal and contrary to law and compliance therewith by plaintiff is prohibited by law;

* * * (c) that a contract between the plaintiff and Local 306 which would include the terms and conditions as set forth in the aforesaid letter of December 11, 1941, or any terms or conditions similar thereto or to any part thereof, would be a contract in restraint of trade and commerce among the several States of the United States within the meaning of Section 1 of the Sherman Anti-Trust Act, 26 Stat. 209, 15 U. S. C. A. Section 1; (d) that compliance by the plaintiff with the aforesaid demands of the defendant Local 306 would be in violation of Section VI of the Consent Decree in U. S. v. Paramount Pictures Inc., *et al.*, and (e) that if all or a number of distributors of motion pictures should comply with the aforesaid demands of the defendant Local 306, or with any of them, the defendants and such distributors would engage in a conspiracy in restraint of trade and commerce among the several States of the United States within the meaning of Section 1 of the Sherman Anti-Trust Act, 26 Stat. 209, 15 U. S. C. A., Section 1."

This suit is brought under the National Labor Relations Act, as reenacted in the Labor-Management Relations Act of 1947, for similar declaratory relief against similar threats by the respondent IATSE, coupled with acquiescence by said Loew's Incorporated, and other respondent Companies, in the conspiracy between them and the IATSE, to deprive petitioners, and the class for whom they sue, of their right to work, and also of their right to further negotiate, under their existing contract, with the respondent Companies.

POINT VII.

This Court Has Approved Declaratory Relief in a Case of Conspiracy, of a Labor Group With Non-labor Groups, in Violation of Federal Law.

Allen Bradley Company, et al. v. Local Union No. 3, International Brotherhood of Electrical Workers, et al., 325 U. S. 797, 811, 812 (65 S. Ct. 1533, 89 L. Ed. 1939):

Summary of Argument.

It has been respectfully submitted under the foregoing points:

1. That the Court had, and has, original jurisdiction under the Fifth Amendment and related laws, if they guarantee the federal right to work under contract, and to negotiate further under the terms thereof, in accordance with Section 7 of the National Labor Relations Act, as amended, free from conspiracy and interference from private parties.

2. That the Court had, and has, original jurisdiction under the Judicial Code, Section 24(1)(8), because this case arises under said Section 7 of the National Labor Relations Act, as reenacted in the Labor-Management Relations Act of 1947.

3. That the Court had, and has, original jurisdiction under said Judicial Code, Section 24, to act upon, and enforce, the unanimous December 26, 1945, award of the A. F. of L. arbitration committee, to follow the historic, and existing, division of work between the Carpenters and

the IATSE, and the committee's August 16, 1946, clarification of said award to make that decision effective.

4. That the Court also now has additional original jurisdiction under remedial Section 301(a) of the Labor-Management Relations Act of 1947.

5. That having original jurisdiction, the Court had, and has, jurisdiction in this action for declaratory relief only.

6. That the Court has said original and declaratory jurisdiction under the principle established in *Oil Workers International Union etc. v. Texoma etc.* (*supra*) and *Loew's Incorporated v. Basson* (*supra*).

7. That this Court has approved declaratory relief in a case of conspiracy, of a labor group with non-labor groups, in violation of federal law.

In conclusion, it is respectfully prayed that the Court consider the importance of this case in the public interest. There can be no wholesome labor-management relations unless law, and labor-management contracts under law, and the right to continue negotiations under the terms of said contracts, and A. F. of L. arbitration awards, as intended, are held above the power of any private interests to nullify the contracts and awards, and thereby to nullify the law.

Respectfully submitted,

ZACH LAMAR COBB,
Attorney for Petitioners.

APPENDIX A.

Memorandum Opinion. [R. 122.]

This action for a declaratory judgment is brought by sixteen individuals, members of the United Brotherhood of Carpenters and Joiners of America (hereinafter called Carpenters), on behalf of themselves and others similarly situated, to determine and to protect against alleged conspiracy their rights under certain agreements entered into between the motion picture studios, Carpenters, the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada (hereinafter called Stagehands), and others. The defendant studios and Stagehands have moved to dismiss on the grounds that: (1) this court lacks jurisdiction; (2) the court should, in the proper exercise of its discretion, decline to assume jurisdiction; and (3) the complaint fails to state a claim upon which relief can be granted. [101]

The forty-eight page complaint when analyzed presents nothing more or less than a request that this court interpret a private contract or agreement allocating certain work on stage sets in the moving picture industry. As stated by counsel in oral argument, the difference between the parties is simply who is "to drive the nails." The serious question before the court is whether this court has jurisdiction in the absence of diverstiy of citizenship.

Thus, we have an action in which private individuals ask this court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with

each other. Since this is a court of limited jurisdiction, every case brought here must fall within the terms of a provision of some statute of the United States. Plaintiffs allege (paragraph VIII):

> "Jurisdiction of this Court is vested by virtue of Section 400, Title 28, United States Code Annotated; Section 41(1), 41(8), 41(12), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United States Code Annotated; Sections 43 and 47(3), Title 8, United States Code Annotated; Section 157, Title 29, United States Code Annotated; and the Constitution of the United States, Amendments V and XIV."

If the case does not fall within the terms of one or more of these statutes or amendments to the Constitution, the court must dismiss the action for want of jurisdiction.

28 United States Code Annotated 41(12) and 8 United States Code Annotated 47(3) give the District Courts jurisdiction in suits for damages on account of injury to the plaintiff's person or property, or the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of a conspiracy. Under 28 United States Code Annotated 41(12), damages are an essential part of the judgment, and damages will vary from person to person. Their rights are several, and a judgment in this action will not bind the parties not before the court. Pentland v. Dravo Corp., 3 Cir., 152 F. (2d) 851; [102] Bethlehem Shipbuilding Corp. v. Nylander, 14 Fed. Supp. 201. The decision here would not settle the entire controversy, and where that cannot be done, a complaint seeking a declaratory judgment should be dismissed. Angell v. Schram, 6 Cir., 109 F. (2d) 380,

382; United Electrical R. & M. W. v. Westinghouse Electric Corp., 65 Fed. Supp. 420, 423; Koon v. Bottolfsen, 60 Fed. Supp. 316.

Disregarding the limitations of said section on account of the requirement of damages, this court would still be without jurisdiction, since these statutes were passed to protect individuals from violations of their rights by State action, and none is here alleged. Love v. Chandler, 8 Cir., 124 F. (2d) 785, 786-7. Only rights of citizens under the laws of the United States are protected. Mitchell v. Greenough, 9 Cir., 100 F. (2d) 184, cert. denied 306 U. S. 659, 83 L. Ed. 1056, 59 S. Ct. 788. That being true, since more than Three Thousand Dollars is admittedly involved, this section can in no event confer any jurisdiction not already given by 28 U. S. C. A. 41(1), which is hereinafter discussed.

28 U. S. C. A. 41(1) and 8 U. S. C. A. 43 both provide for redress for deprivation of rights under color of any law, statute, ordinance, regulation, custom, or usage of any State or Territory, in express terms. It is not alleged that the defendants are acting under color of any State law, etc. so these sections cannot act to establish jurisdiction in this court. Allen v. Corsane, 56 Fed. Supp. 169; California Oil & Gas Co. v. Miller, 96 Fed. 12, 22; Picking v. Pennsylvania R. R., 151 F. (2d) 240, is not applicable here, because the wrongs alleged in that case were all under color of State law.

28 U. S. C. A. 729 merely establishes the procedure to be followed by the federal courts in certain classes of cases. This section has reference not to the extent or

scope of jurisdiction, nor to the rules of decision, but to the forms of procedures and remedy. In re Stupp, 23 Fed. Cas. No. 13,563; United States v. Reid, 12 How. 361, 365, 53 U. S. 361, 365, 13 L. Ed. 1023, 1025; Scaffidi v. United States, [103] 1 Circ., 37 F. (2d) 203, 207.

The Fifth and Fourteenth Amendments of the Constitution are designed to protect the individual from invasion of his rights, privileges and immunities by the federal and the State governments respectively. Corrigan v. Buckley, 271 U. S. 323, 330, 70 L. Ed. 969, 46 S. Ct. 521; Civil Rights Cases, 109 U. S. 3, 27 L. Ed. 969, 46 S. Ct. 521; neither Hague v. C. I. O., 307 U. S. 496, 83 L. Ed. 1385, 59 S. Ct. 972, 122 A. L. R. 695, nor Screws v United States, 325 U. S. 91, 89 L. Ed. 1495, 65 S. Ct. 1031, 162 A. L. R. 1330, has overruled these cases, even by implication, for the wrongs complained of in both the Hague and the Screws cases were committed by the government or under color of law.

28 U. S. C. A. 41(8) confers jurisdiction on the District Courts of the United States in "all suits and proceedings arising under any law regulating commerce," without regard to the jurisdictional amount requirement of 28 U. S. C. A. 41(1). Since more than Three Thousand Dollars is involved in this action, Section 41(8) will not establish jurisdiction in this court if it cannot be established under Section 41(1), which grants jurisdiction in all suits where the matter in controversy exceeds Three Thousand Dollars and "arises under the Constitution or laws of the United States."

It is not enough that the dispute should merely affect commerce to bring it within the scope of Section 41(8) or Section 41(1). Delaware, Lackawanna & Western R. R. v. Slocum, 56 Fed. Supp. 634.

In Gully v. First National Bank, 299 U. S. 109, 81 L. Ed. 70, 57 S. Ct. 96, Mr. Justice Cardozo said, at page 112:

> "To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. * * * The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another." [104]

Plaintiffs do not claim any violation of the right to bargain collectively under the National Labor Relations Act, 29 U. S. C. A. 157, nor the right to contract for employment, nor the right to contract collectively for employment. Plaintiffs assert that the right to work at one's chosen vocation within the terms of a contract negotiated under federal law, the National Labor Relations Act, has been violated. The bare right to work is not a right protected by federal law. Love v. United States, 8 Cir., 108 F. (2d) 43, cert. denied 309 U. S. 673, 84 L. Ed. 1018, 60 S. Ct. 716, and cases therein cited; Brents v. Stone, 60 Fed. Supp. 80, 84; Emmons v. Smitt, 58 Fed. Supp. 869, affirmed 6 Cir., 149 F. (2d) 869, 872.

From the mere fact that a right was established by federal law, it does not follow that all litigation growing therefrom arises under the laws of the United States. Actions growing from the issue of federal land grants do not arise "under the laws of the United States." Shoshone Mining Co. v. Rutter, 177 U. S. 505, 44 L. Ed. 864, 20 S. Ct. 726; Shulthis v. McDougal, 225 U. S. 561, 569, 56 L. Ed. 1205, 32 S. Ct. 704, 707; Marshall v. Desert Properties, 9 Cir., 103 F. (2d) 551, cert. denied 308 U. S. 563, 84 L. Ed. 473, 60 S. Ct. 74. An action brought to enforce a right under a contract which is made as the result of rights granted under the patent laws to receive royalties upon sale or license of the patented device is not an action arising under the laws of the United States. Odell v. Farnsworth, 250 U. S. 501, 504, 63 L. Ed. 1111, 39 S. Ct. 516. To come within the provisions of these sections, the suit must really and substantially involve a dispute respecting the validity, construction, or effect of some law of the United States, upon the determination of which the result depends Malone v. Gardner, 4 Cir., 62 F. (2d) 15; Delaware, Lackawanna & Western R. R. v. Slocum, 56 Fed. Supp. 634.

The only important issue in the case at bar is the interpretation of a contract. The meaning of this contract is not dependent on the National Labor Relations Act, whether it owes its existence to [105] that Act or not. A decision by this court that the Carpenters or the Stagehands, as the case may be, have the right to construct

stage sets would not involve consideration of the validity, construction, or effect of the Act. The desision would be based purely and simply upon contractual principles. Therefore, this suit does not arise under the Constitution or laws of the United States, and this court lacks jurisdiction.

In this memorandum opinion, this court has not attempted to cover the broad field of law cited in over two hundred and twenty-five cases referred to in the two hundred pages of briefs. To do so would require the writing of a treatise on various phases of the subjects of jurisdiction of the United States District Courts in labor disputes.

I have only attempted to outline my reasons for my conclusion that this court lacks jurisdiction. In view of my conclusion, it is unnecessary to pass upon the other questions raised by the various motions.

The above entitled action is hereby ordered dismissed for want of jurisdiction.

Dated: This 25 day of Feby., 1947.

BEN HARRISON,

Judge.

APPENDIX B.

Agreement. [In Exhibit B; R. 37.]

In compliance with the decision of the American Federation of Labor, a conference was called and held July 9, 1921, in the Executive Council Chamber of the American Federation of Labor. The organizations participating in the conference were represented as follows:

The United Brotherhood of Carpenters and Joiners of America:

Mr. Frank Duffy and Mr. John Cosgrove.

The International Alliance of Theatrical Stage Employees:

Mr. Harry L. Spencer, Mr. William F. Canavan, Mr. Richard J. Green.

The American Federation of Labor:

Mr. Samuel Gompers, Mr. James O'Connell and Mr. Hugh Frayne.

The entire subject of the differences of jurisdictional claims between the two first named organizations were thoroughly gone into with a view of reaching an agreement.

It is agreed by the International Alliance of Theatrical Stage Employees that all work done on lots or location and all work done in shops, either bench or machine work, comes under the jurisdiction of the United Brotherhood of Carpenters and Joiners of America.

It is agreed that:

All carpenter work in and around Moving Picture Studios belongs to the carpenter. This includes:

1. Any and all carpenter work in connection with the Moving Picture Studios, the construction of stages or platforms on which buildings or parts of buildings are to be erected.

2. All carpenter work in connection with the erection of any building or part of building, from which a picture is to be taken.

3. The operation of all wood-working machinery in the making of all furniture, fixtures, trim, etc., for use in Motion Picture Studios, belongs to the carpenter.

The carpenters lay no claim to what is usually termed or referred to as the property man, or those employed in placing furniture, laying carpets, hanging draperies, pictures, etc.

It is clearly understood that in so far as Section 2 of this part of the agreement is concerned and particularly the right to the setting up and striking of the scenes on the stages after the construction work has been completed, it shall be liberally and co-operatively construed so as to do no injustice to either the United Brotherhood of Carpenters and Joiners of America or the International Alliance of Theatrical Stage Employes.

Any differences arising as to the interpretation of this agreement and particularly of Section 2 hereof, shall be

adjusted by the International Presidents of both organizations.

For the United Brotherhood of Carpenters and Joiners of America:

JOHN T. COSGROVE,
First General Vice-President.

FRANK DUFFY,
General Secretary.

For Theatrical Stage Employees:

WM. F. CANAVAN,
RICHARD GREEN,
HARRY L. SPENCER.

[UNION LABEL]

APPENDIX "C."

[Exhibit "A", R. 28-34.]

PRODUCERS COMMITTEE
Pat Casey, Chairman

July 2, 1946

Mr. Herbert K. Sorrell,
President, Conference of Studio Unions,
4157 West Fifth Street
Los Angeles 5, California

My Dear Herb:

Pending the completion of contracts between the individual unions, members of the C.S.U., and the major studios, these Minutes (copy attached herewith) shall constitute an Interim Agreement.

Sincerely yours,

(signed) Pat Casey,
Pat Casey, Chairman
Producers Committee

Enclosure
PC/h

Minutes of Meeting of Producers Labor Committee and Attorneys and Representatives of the C.S.U., Central Labor Council, I.A.T.S.E., Basic Group, and Plumbers, Held in Beverly Hills on Tuesday, July 2, 1946, at 2:45 P. M., Covering Agreements Reached and Effective Pending the Formal Signing of Contracts.

C.S.U. is representing:

Painters	Janitors
Carpenters	Analysts
Machinists	Publicists
Electricians	Officers & Guards
Plumbers	Set Designers (#1421)
Sheetmetal Workers	Cartoonists

All of the above to get a 25% increase on base and negotiate some inequities in a few crafts.

All retroactive payments from expiration of previous contracts, most of which are January 1, 1946, except for new conditions such as night premiums at 6 p.m. etc., will become effective on July 15, 1946. Retro payments to be made within 30 days if possible. An interim agreement will be entered into pending drawing up formal agreements.

The 25% increases are on minimum wage scales and not on any overscale.

This deal is predicated on the recently concluded deal with the Independents and not on any new or changed deals which might be made later with them.

Arbitration:

C.S.U. as a body consisting of several locals will pledge itself to an arbitration procedure. If any of its members who subscribe to this plan fails to accept and to be guided by any arbitration award, he will not receive the support of the C.S.U. in its position.

This applies to Studio jurisdiction only and between locals.

Local #946 agrees to bind itself to the C.S.U. arbitration agreement and will find out if it can secure permission from its international to sign such an agreement as a local. All contracts will contain this arbitration clause —verbatim in each contract.

Any dispute other than wages should be submitted to arbitration. Skelton and Brewer will get together and make an agreement covering arbitration. Basis of arbitration will be the A.F.L. three man directive.

Any machinery set up for arbitration will not require the Electricians to withdraw their court action already started.

It was agreed to let each Studio interpret the directive and award the work where in its judgment it belongs under the directive and no work stoppage will be ordered for next 30 days or until the abitration machinery is set up.

Plant Protection:

Camp's dispute with Helm is a private matter. Not to be discussed here.

Analysts:

Get an increase of 25% on the base rate during the interim period starting July 15, 1946. Understood there will be some adjustment of inequities, negotiations during next thirty days.

Machinsts:

Both sides agree to let Machinists enjoy the 25% increase pending the N.L.R.B. decision. We are free to engage Machinists as individuals—not through either union, until the N.L.R.B. decision is made.

Publicists:

Both sides agree to let the Publicists enjoy the 25% increase pending the N.L.R.B. decision. Inequities to be presented in the 30 day period.

Officers & Guards:

Independent contract provides for $1.25 per hour for 12 months, escalating to $1.50 after 12 months. Night rates to be as negotiated with Producers.

Janitors:

No rates were established for the Independents on certain classifications now in the Majors' contracts, such as Window Washers, Floor Waxers, etc. These will be adjusted relatively.

Cartoonists:

We will negotiate with Cartoonists with a 25% floor and inequities will be negotiated.

Set Designers:

Chadwick agreed not to hire anyone below the rates now being paid. Majors agree to an increase of 25% on current contract rates and to negotiate any inequities in the next 30 days.

Work Week:

36 cumulative hour week, 1½ after 6 hours, minimum call 6 hours, first week of employment. Applies only to off production employees. If we find this is a hardship we can come back and see if we can solve the matter in some other way.

Contract for two years. If living costs go up 5% or more between July 1st and December 31st, 1946, unions may demand renegotiation of wages only.

Bureau of Labor Statistics for local area to be the authority.

All crafts going back to work Wednesday a.m. July 3, 1946, without discrimination.

(signed) Pat Casey
(signed) Herb Sorrell

Wage Scales, Hours of Employment and Working Conditions

I. Studio Minimum Wage Scale

1.

"A" United Brotherhood of Carpenters and Joiners of America Studio Local No. 946		Studio Rates	
		Schedule A*	Schedule C
No.	Classification	Daily 6 hours 1½ after 6 Min. call** 6 hours	Weekly "On Call"
	For those employees associated with organizations of or performing the duties of Journeymen, Carpenters, Woodworking Machine Men and Woodturners		
		Per Hour	Per Week
A-1	Construction and/or Maintenance Foreman	2.68½	165.25
A-2	Construction and/or Maintenance Gang Boss	2.56	
A-3	Journeyman and/or Maintenance Carpenter	2.25	
A-4	Apprentice Carpenter—1st year	1.49	
A-5	Apprentice Carpenter—2nd year	1.57	
A-6	Apprentice Carpenter—3rd year	1.75	
A-7	Apprentice Carpenter—4th year	2.01	
A-8	Standby or Keyman	2.25	

*Schedule A off production employees are guaranteed a minimum employment of 36 hours within 6 consecutive days (excluding Sundays and Holidays) starting with the day of employment. After this minimum guarantee of hours has been fulfilled, employment may be continued on a daily basis until termination. Subsequent employment is subject to another minimum guarantee of 36 hours as above. Overtime hours (including Sundays, Holidays and Golden Hours) may be included in fulfilling the minimum guarantee of employment.

**Minimum call for A-1 and A-2 shall be 6½ hours for overlapping shifts.

2. Night Rates (Except for "on call" employees)—

   a) Employees called to work between 6:00 a.m. and 8:00 p.m. shall receive a 10% premium for all time worked between 6:00 p.m. and 6:00 a.m.

   b) Employees called to work between 8:00 p.m. and 4:00 a.m. shall receive a 50% premium for all time worked.

   c) Employees called to work between 4:00 a.m. and 6:00 a.m. shall receive a 50% premium for all time worked until 6:00 a.m., and straight time for the remainder of the minimum call.

3. Studio wage scales shall prevail on all locations.

4. Present working conditions unless modified herein, to remain in effect. (Distant Location working conditions to be negotiated.)

5. New wage rates and guarantees of employment to be established effective July 15, 1946.

6. Retroactive pay based on new wage rates to be computed and paid from January 1, 1946. (New guarantees of employment, and new night rates are not retroactive.)

APPENDIX "D."

[Exhibit "D", R. 42.]

Chicago, Illinois
December 26, 1945

In conformity with the Executive Council directive handed down during the Cincinnati meeting, October 15-24, 1945, the special committee arrived in Hollywood, California, early in December. The directive carried specific instructions, reading:

"International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada—Brotherhood of Painters, Decorators and Paperhangers of America—United Brotherhood of Carpenters and Joiners of America, Etcetera.

"Hollywood Studio Union Strike and Jurisdiction Controversy:

1. The Council directs that the Hollywood strike be terminated immediately.
2. That all employees return to work immediately.
3. That for a period of thirty days the International Unions affected make every attempt to settle the jurisdictional questions involved in the dispute.
4. That after the expiration of thirty days a committee of three members of the Executive Council of the American Federation of Labor shall investigate and determine within thirty days all jurisdictional questions still involved.
5. That all parties concerned, the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States

and Canada, the United Brotherhood of Carpenters and Joiners of America, the International Association of Machinists, the United Association of Plumbers and Steam Fitters of the United States and Canada, the Brotherhood of Painters, Decorators and Paperhangers of America, the International Brotherhood of Electrical Workers of America, and the Building Service Employees' International Union, accept as final and binding such decisions and determinations as the Executive Council committee of three may finally render."

All parties agreed to accept the decision of the committee and to be bound thereby. Through committee arrangements made prior to arrival, all organizations involved in the dispute participated in the intial meeting held Monday, December 3, 1945. A definite method of procedure was agreed upon and there was unanimity of opinion on the plan established.

Exhaustive hearings were conducted by the committee and a complete transcript, together with various exhibits were included in the record. Representatives of the Unions involved adhered to the following schedule:

Tuesday morning, December 4, 1945—Brotherhood of Painters, Decorators and Paperhangers of America.

Tuesday afternoon, December 4, 1945—International Brotherhood of Electrical Workers of America.

Wednesday morning, December 5, 1945—United Association of Plumbers and Steam Fitters of the United States and Canada.

Wednesday afternoon, December 5, 1945—Building Service Employees' International Union.

Thursday morning, December 6, 1945—International Association of Machinists.

Thursday afternoon, December 6, 1945—United Brotherhood of Carpenters and Joiners of America.

Friday, December 7 and Saturday afternoon, December 8, 1945—International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada.

On Saturday morning, December 8, the committee, along with one representative of each International Union listed in the Executive Council directive, visited the Paramount Studios in Hollywood. The committee investigated and inspected all phases of the work jurisdiction in dispute through questioning the participants and reviewing completed work and items in the process of development.

The investigation revealed that a large portion of the work has been in dispute over a long period of years. Records supplied from the files of the American Federation of Labor, including numerous agreements previously entered into, were made the subject of committee examination and study.

A number of International Unions not included in the Executive Council's directive requested permission to set forth their jurisdictional claims in the Motion Picture Industry. All such requests were denied and only those Unions listed in the original directive were included in the committee explorations and findings.

An analysis disclosed that three possible methods of solution could be utilized, *i. e.*,

(a) Strict adherence to craft or vertical lines of demarcation in the motion picture studios.

(b) Establishment of an industrial or horizontal union throughout the industry.

(c) A division of work designations within the industry patterned after previous agreements, negotiated mutually by the various crafts.

After careful and thorough study the committee unanimously agreed that the latter plan is unquestionably the best method of approach. It is the committee's considered opinion that such procedure affords the only plausible solution to a most difficult and complex problem.

Accordingly, this decision is based on that premise and the below listed conclusions are final and binding on all parties concerned:

* * * * * * * *

6. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA:

The committee rules that the division of work agreement entered into between the United Brotherhood of Carpenters and Joiners of America and the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada on February 5, 1925, and

known as the "1926 Agreement" be placed in full force and effect immediately.

Division of work by the United Brotherhood of Carpenters and Joiners of America:

Section 1. All trim and mill work on sets and stages.

Section 2. All mill work and carpenter work in connection with studios.

Section 3. All work in carpenter shops.

Section 4. All permanent construction.

Section 5. All construction work on exterior sets.

Division of work by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada:

Section 6. Miniature sets.

Section 7. Property building.

Section 8. Erection of sets on stages except as provided in Section 1.

Section 9. Wrecking all sets, exterior and interior.

Section 10. Erecting platforms for lamp operators and camera men on stages.

This decision is applicable to the Motion Picture Industry and none other, and is not to be construed as interfering with or disrupting any jurisdiction otherwise granted the United Brotherhood of Carpenters and Joiners of America by the American Federation of Labor.

7. INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA.

The committee rules that the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada has jurisdiction over all work specifically designated and defined in the foregoing work divisions. It is understood, however, that such designation or definition shall in no wise affect jurisdictional grants awarded any National or International Union affiliated with the American Federation of Labor other than those to whom this decision is specifically made applicable.

This decision is applicable to the Motion Picture Industry and none other, and is not to be construed as interfering with or disrupting any jurisdiction otherwise granted the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada by the American Federation of Labor.

Signed:

FELIX H. KNIGHT, Chairman
W. C. BIRTHRIGHT,
W. C. DOHERTY,
Executive Council Committee of the
American Federation of Labor.

APPENDIX "E."

[Exhibit "F", R. 57.]

Chicago, Illinois
August 16, 1946

Pursuant to instructions handed down by the Executive Council at its session held on August 15, 1946, the Hollywood Jurisdictional Committee reviewed the work division applicable to the United Brotherhood of Carpenters and Joiners of America as set forth in the Committee's decision dated December 26, 1945, and reaffirmed its previous decision.

The Committee took cognizance of the allegations contained in a report submitted to President Green by Organizer Daniel V. Flannagan under date of August 9, 1946. According to a brief embodied therein Studio Carpenters Local 946, U. B. of C. & J. of A., alleges that certain violations have taken place whereby the carpenters jurisdiction set forth in the directive has been encroached upon.

Jurisdiction over the erection of sets on stages was awarded to the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada under the provisions set forth in Section 8 of the decision which specifically excluded trim and mill work on said sets and stages. The word erection is construed to mean assemblage and such sets on stages or locations. It is to be clearly understood that the Committee recognizes the jurisdiction over construction work

on such sets as coming within the purview of the United Brotherhood of Carpenters and Joiners jurisdiction.

Sections 2 to 5, inclusive, recognized the rightful jurisdiction of the United Brotherhood of Carpenters and Joiners of America on all mill work and carpenter work in connection with studios, all work in carpenter shops, all permanent construction and all construction work on exterior sets.

In view of the alleged violations, the Committee hereby directs that all participants in the Hollywood Motion Picture Studio dispute strictly adhere to the provisions of the directive handed down on December 26, 1945.

(Signed)

FELIX KNIGHT
W. C. BIRTHRIGHT
W. C. DOHERTY.

APPENDIX "F."

Second Cause of Action. [R. 22.]

I.

Refer to Paragraphs I to XXXV, inclusive, of the First Cause of Action herein and incorporate herein each and every allegation of said Paragraphs as if realleged in full herein.

II.

Commencing on or about November 1, 1944, when Carpenters Union undertook to open negotiations to replace a contract with defendant Motion Picture Companies expiring on December 31, 1944, and continuing until the present time, defendants Walsh, Brewer, I.A.T.S.E., John Doe I, II, III, IV and V, Jane Doe I, Jane Doe II, and defendants Motion Picture Companies, Producers Association, John Doe I Association, and John Doe II Association, conspired each with the other, and continue to so conspire, to deprive plaintiffs of having and exercising, and to injure plaintiffs in their persons and property in the exercise of, rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States, in that said defendants conspired and continue to conspire each with the other to deprive plaintiffs of the right and privilege to work at their chosen vocations, to-wit: studio carpenters, and to interfere with, obstruct, impede, and hinder said plaintiffs in the free and unhampered exercise of said right and privilege; that said conspiracy has resulted and continues to result in great damages to plaintiffs in the loss of wages.

III.

In furtherance of said conspiracy, on April 10, 1945, defendants Walsh and I.A.T.S.E. chartered a local union of I.A.T.S.E., designating it Carpenters Local No. 787, for the purpose of providing strikebreakers through said charter to impede, interfere with, obstruct, hinder and defeat plaintiffs in the free exercise of the aforesaid rights and privileges, injuring plaintiffs in their persons and property and depriving plaintiffs of having and exercising their rights and privileges as citizens of the United States.

IV.

In furtherance of said conspiracy, and with the object of injuring plaintiffs in their persons and property and depriving plaintiffs of having and exercising their rights and privileges as citizens of the United States, on April 14, 1945, defendant Walsh directed a letter to members of the Carpenters Union, and other unions, in part as follows:

> "First of all, I want you to know that the International Alliance has reached an agreement with the Producers Association by which the I.A.T.S.E. will supply all labor to the studios, not only in our crafts which were recognized before the strike, but also in those classifications which have been vacated by the striking unions. The I. A. assumed this responsibility only after we were certain that it was impossible to reach an honorable settlement with those persons who are conducting this strike against the I.A.T.S.E.
>
> "On Tuesday night of this week a Carpenter's Local was chartered and is now known as Local No. 787 of the I.A.T.S.E. On Thursday night, the Motion

Picture Studio Painters, Local No. 788 of the I.A.T. S.E. was chartered. In addition to these Locals, there will be a local charter for Machinists, and if necessary for other crafts. We are proceeding in accordance with our agreement with the Producers to man the studios.

"As the International President of the I.A.T.S.E., I assure you that having assumed this jurisdiction, we will stake the entire strength of the International Alliance on our efforts to retain it."

The full text of said letter is attached hereto as Exhibit "H" and incorporated herein by reference.

V.

In furtherance of said conspiracy, and by "agreement with the Producers Association," and "proceeding in accordance with our agreement with the Producers to man the studios," as stated in the aforesaid letter of April 14, 1945, and with the object of injuring plaintiffs in their persons and property and depriving plaintiffs of having and exercising their rights and privileges as citizens of the United States, defendants Walsh, Brewer and I.A.T.S.E. did from March 12, 1945, and until on or about November 1, 1945, provide strikebreakers to defendant Motion Picture Companies, and said companies did wrongfully and without cause discharge members of Carpenters Union from their employment and did employ said strikebreakers to do carpenter work in the place of members of said Carpenters Union so discharged.

VI.

In furtherance of said conspiracy, defendants Walsh and I.A.T.S.E. did on or about November 1, 1945, create and charter Set Erectors Local No. 468 of defendant I.A.T.S.E. and did issue "Emergency Working Cards" and "Permits to Work" to persons not members of said union to perform carpenter services for defendant Motion Picture Companies (see Exhibit "E") and said companies did discharge numerous members of Carpenters Union and did employ for said carpenter work persons so supplied to them by said Local No. 468 of defendant I.A.T.S.E.; that to date approximately twelve hundred of said Carpenters Union have been so discharged.

VII.

In furtherance of said conspiracy, defendant Walsh on August 31, 1946 directed a letter to defendant Producers Association, saying in part:

> "It is the contention of this International Union that this so called 'clarification' was issued without authority and in violation of the Cincinnati Agreement to which this International Alliance, yourselves, and the other International Unions involved, were all parties. The Cincinnati Agreement in making provision for the creation of the three man committee, specifically provided that the parties thereto accept the Committee's decision as final and binding."

The full text of said letter is attached hereto and incorporated herein by reference as Exhibit "I."

VIII.

In furtherance of said conspiracy, defendant Walsh on September 13, 1946, directed a letter to local unions of defendant I.A.T.S.E., in part as follows:

> "That no other organization shall be permitted, directly or indirectly to infringe upon the jurisdiction of the I.A.T.S.E. or its Local Unions in the Hollywood Studios; and that the employment of the members thereof shall not be interfered with or adversely affected."

The full text of said letter is attached hereto and incorporated herein by reference as Exhibit "J."

WHEREFORE, plaintiffs pray judgment of this Court declaring their rights as follows:

I. That plaintiffs have the right and privilege as citizens of the United States to work at their chosen vocations free from deprivation or injury by defendants and each of them, acting individually or in conspiracy with each other, or by and through their agents or officers;

II. That the Decision, Findings and Award of the Executive Committee of the American Federation of Labor of December 26, 1945, as clarified on August 16, 1946, is binding on all defendants herein;

III. That plaintiffs have the right, free from deprivation or injury by defendants, and each of them, acting individually or in conspiracy with each other,

or by and through agents or officers, to perform that work specified in the American Federation of Labor Decision, Findings, and Award of December 26, 1945, as clarified by the directive of August 16, 1946;

IV. That the term "erection of sets on stages" as used in said award does not include any "set construction" but means "assemblage of such sets on stages" as stated in the directive of August 16, 1946;

V. That plaintiffs have the right to do any and all carpenter work in connection with the studios;

VI. That the agreement of July 2, 1946, is binding on the defendants party thereto.

VII. That plaintiffs have the right to work for defendant Motion Picture Companies under the rates of pay, terms, and conditions of the agreement of July 2, 1946, free from deprivation or injury by defendants and each of them, acting individually or in conspiracy with each other, or by their agents or officers.

And such further relief as the Court deems proper.

APPENDIX "G."

August 31, 1946

Association of Motion Picture Producers, Inc.
5504 Hollywood Boulevard
Hollywood 28, California

Gentlemen:

I have received from President Green of the American Federation of Labor a communication inclosing a copy of a statement described as "clarification" of the decision in the Hollywood jurisdictional dispute, made by Vice-Presidents Knight, Birthright and Doherty, dated December 26, 1945.

It is the contention of this International Union that this so-called "clarification" was issued without authority and in violation of the Cincinnati Agreement to which this International Alliance, yourselves, and the other International Unions involved, were all parties. The Cincinnati Agreement in making provision for the creation of the three man committee, specifically provided that the parties thereto accept the Committee's decision as final and binding.

If the Committee's decision as originally rendered is not fully complied with by you this International Alliance will take such action as may be necessary to protect its interests.

Yours very truly,

RICHARD F. WALSH (signed)
International President.